

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

U.S. COMMODITY FUTURES
TRADING COMMISSION

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Plaintiff,

*

Civil Action No.: 8:12-cv-01225-PWG

v.

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THE BORROWING STATION LLC, et al.

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Defendants.

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**[PROPOSED] CONSENT ORDER OF PERMANENT INJUNCTION, CIVIL MONETARY
PENALTY, AND OTHER EQUITABLE RELIEF AGAINST DEFENDANTS**

I. INTRODUCTION

On April 23, 2012, Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint for Injunctive Relief, Civil Monetary Penalties, and Other Equitable Relief against The Borrowing Station, LLC ("Borrowing Station") and Sidney J. Charles, Jr. ("Charles") (collectively "Defendants"). (ECF No. 1.) The Complaint alleges that from at least October 2009 through at least July 2011 (the "relevant period"), Borrowing Station, acting through its officers, employees, or agents, and Charles, individually and as officer, employee, and/or agent of Borrowing Station, orchestrated and operated a Ponzi scheme involving a pooled investment vehicle that traded off-exchange leveraged or margined foreign currency contracts ("forex" or "foreign currency"). The Complaint also alleges that Borrowing Station operated the pooled investment vehicle that traded forex

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("forex pool") without being registered as a commodity pool ("CPO"), as required, and Charles solicited pool participants and/or supervised others who solicited pool participants without being registered as an associated person ("AP") of Borrowing Station, as required. The Complaint seeks injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act ("Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (CFTC Reauthorization Act of 2008 ("CRA")), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), 7 U.S.C. §§ 1 *et seq.* (Supp. V 2012), specifically Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. V 2012), and as of October 18, 2010, the effective date of new regulations relating to off-exchange forex transactions, Commission Regulation ("Regulation") 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2011). In addition, the Complaint charges Borrowing Station with violating Section 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011) for its failure to register as a CPO. Also, the Complaint charges Charles with violating Section 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2011) for his failure to register as an AP of a CPO.

The Court issued an *ex parte* statutory restraining order against Defendants on April 23, 2012 and an order for preliminary injunction against Defendants on May 4, 2012. (ECF Nos. 7, 15.)

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Defendants without a trial on the merits or any further judicial proceedings, Defendants:

1. Consent to the entry of this Consent Order of Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants ("Consent Order");
2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledge service of the summons and Complaint;
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (Supp. V 2012);
5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this case pursuant to the Act, 7 U.S.C. §§ 1 *et seq.*;
6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006);
7. Waive:
 - (a) any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2012), relating to, or arising from, this case;

(b) any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this case;

(c) any claim of double jeopardy based upon the institution of this case or the entry in this case of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) any and all rights of appeal from this case;

8. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this case, even if Defendants now or in the future reside outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Consent Order by alleging that it fails to comply with Fed. R. Civ. P. 65(d) and waives any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the findings of fact and conclusions of law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendants shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, Defendants neither admit nor deny the allegations in the Complaint or the findings of fact and conclusions of law in this Consent Order, except as to jurisdiction and venue, which they admit. Further, Defendants agree and intend that the allegations contained in the Complaint and all of the findings of fact and conclusions of law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Defendants; (b) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a (Supp. V 2012), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2012); and/or (c) any proceeding to enforce the terms of this Consent Order;

12. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by Section VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside of the United States; and

13. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendants in any other proceeding.

III. FINDINGS AND CONCLUSIONS

A. Findings of Fact

1. The Parties

14. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

15. Defendant The Borrowing Station, LLC is a Nevada limited liability company. Borrowing Station's principal place of business was in Bowie, Maryland during the relevant period. Borrowing Station has never been registered with the CFTC. Borrowing Station is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment banking company, and is not an AP of such entities.

16. Defendant Sidney J. Charles, Jr. currently resides in Raceland, Louisiana. Charles formed and controlled Borrowing Station. During the relevant period, Charles resided at the same street address where Borrowing Station operated in Bowie, Maryland. Charles has never been registered with the CFTC. Charles is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment banking holding company, and is not AP of such entities.

2. Defendants' Fraudulent Solicitation of Pool Participants

17. During the relevant period, Borrowing Station, Charles, and other agents, officers, and employees fraudulently solicited 18 individuals and entities to place funds with Borrowing Station for participation in a pooled investment vehicle managed by Borrowing Station, through Charles, that traded forex.

18. Defendants solicited pool participants through the Borrowing Station website, and through Charles's oral and written solicitations. Defendants also used other individuals to solicit pool participants in the name of Borrowing Station and made commission payments to those individuals.

19. The Borrowing Station website falsely created the impression of an established, successful, and safe investment firm. The website stated that Borrowing Station "is an established company in the United States, specializing in Retirement and Education Savings [sic]." Under a webpage heading titled "Retire Early, Enjoy Life," the Borrowing Station website advertised an

investment "program" that promised prospective individuals who became pool participants "consistent [sic] annual returns of 25% regardless of any market conditions." The Borrowing Station website further stated: "If for any reason we do not reach a return of 25%, we will subsidize your account with our money." The Borrowing Station website touted Borrowing Station's "guarantee [sic] investment strategies" that included trading forex "on a daily basis." Under a webpage heading titled, "50% Return Per Year," the Borrowing Station website explained that Borrowing Station "has created innovative solutions to make your financial [sic] goals a reality. After years of study, we've implemented innovative strategies to double our clients [sic] investments every two years. Our strategies . . . [include] trading currencies on a daily basis." All of these statements on the Borrowing Station website were false.

20. Charles solicited pool participants in person, at his home. In his oral solicitations, Charles promised prospective pool participants returns of 10% per month.

21. While luring prospective pool participants with claims of large profits, Defendants, through Charles and others, minimized the risks of trading leveraged foreign currency. In the website, and their oral and written solicitations, Defendants falsely claimed that pool participant funds were guaranteed against trading losses.

22. In their solicitations and throughout the relevant period, Defendants, through Charles and others, failed to disclose to pool participants and prospective pool participants that their claims of experience and success in trading forex were false and that there was no basis for their representations that pool participants could quickly earn enormous investment returns such as 25% per year or 10% per month,

23. Defendants, through Charles and others, further failed to disclose that they traded only a portion of pool participant funds, operated a Ponzi scheme designed to defraud pool participants, and misappropriated pool participant funds as further alleged below. Defendants, through Charles and others, failed to disclose that they used pool participant funds for Charles's personal expenses and to make payments to pool participants, as further alleged below.

24. Defendants, through Charles, knowingly or with reckless disregard of the truth made such material misrepresentations and omissions in order to induce pool participants to invest funds with them.

25. Pool participants and prospective pool participants relied on Defendants' representations and omissions of fact in making their decisions to invest and reinvest with Borrowing Station.

3. Defendants Traded Only Some Pool Participant Funds and Lost a Majority of Those Funds Trading

26. Lured by Defendants' misrepresentations and omissions, pool participants placed \$369,326 with Borrowing Station to invest during the relevant period.

27. Charles, directly and through other individuals, instructed pool participants to wire their funds directly to Borrowing Station's corporate bank account or provide a check payable to Borrowing Station. During the relevant period, Borrowing Station maintained a corporate bank account. Charles was a signatory on the Borrowing Station bank account.

28. Of the \$369,326 in pool participant funds that Borrowing Station received, Defendants, through at least Charles, deposited or transferred at most \$114,000 into trading accounts at any futures commission merchant ("FCM") or retail foreign exchange dealer ("RFED") registered with the Commission.

29. Defendants, through Charles, opened four proprietary trading accounts in the name of Borrowing Station at two FCMs to whom Charles, via FCM account documentation, identified himself

as the chief executive officer of Borrowing Station. Charles was the only individual authorized to trade in two of the Borrowing Station trading accounts, which received the majority of pool participant funds that Defendants actually traded. Charles and one other person were the only individuals authorized to trade in the other two Borrowing Station trading accounts.

30. Contrary to their representations, Defendants were not successful foreign currency traders. Of the \$114,000 that Defendants deposited into the trading accounts, Defendants withdrew \$48,436 and incurred total net trading losses of \$65,513 between the four proprietary forex trading accounts.

31. As of December 21, 2011, the four Borrowing Station forex trading accounts had a net balance of \$50.

32. Charles never reported these trading losses to pool participants and prospective pool participants, or disclosed to them that only a portion of pool participant funds were being traded.

4. Defendants Misappropriated \$303,813 of Pool Participant Funds

33. During the relevant period, Defendants misappropriated \$303,813 of the \$369,326 in pool participant funds to pay for personal expenses, to make purported profit or commission payments to other pool participants, and to fund Borrowing Station's operations.

34. Charles was a signatory on the Borrowing Station bank account, and assisted, directed, or controlled the handling of pool participant funds deposited into the bank account.

35. Defendants, through Charles and at least one other individual, used approximately \$118,921 of pool participant funds to pay purported profits and commissions to some pool participants. Consistent with the operation of a Ponzi scheme, these payments to Borrowing Station pool participants

were funded by deposits from existing or subsequent pool participants – not profits Defendants generated by trading forex.

36. Defendants, through Charles and at least one other individual, misappropriated at least \$89,000 of pool participant funds to open six accounts in the names of other individuals at a trading entity not registered with the Commission. These six accounts were funded almost entirely by deposits from certain Borrowing Station pool participants – not by the individual account holders.

37. Defendants, through Charles, also misappropriated pool participant funds to pay Charles's personal expenses.

5. Defendants Concealed Trading Losses and Misappropriation Through False Statements

38. Defendants, through Charles and at least one other individual, concealed their unsuccessful forex trading, misappropriation, and fraudulent scheme through checks and written communications that falsely represented Defendants were profitably trading on behalf of pool participants.

39. Defendants, through the acts of Charles and at least one other individual, caused statements in the form of checks to be issued to pool participants that consistently paid the investment returns promised to them. These checks, described on their memo lines as "return on investment" or "monthly returns," were drawn from the Borrowing Station bank account and executed by Charles and at least one other individual. The amount of funds that each check paid typically paralleled returns of 10% per month that Charles, directly and through others, promised to pool participants. The investment returns paid to pool participants were false. Any purported profits that Defendants, through Charles and at least one other individual, paid to pool participants came from the principal of other existing or subsequent pool participants.

40. At least one pool participant who received the purported "monthly returns" solicited prospective pool participants at Charles's direction and with his knowledge. These pool participants represented to prospective pool participants that Defendants were investing profitably on behalf of pool participants and that Borrowing Station consistently paid the investment returns promised to them. Defendants made commission payments to these individuals for their solicitation of pool participants.

41. Starting in at least April 2011, certain pool participants requested that Defendants return their funds. Defendants, through Charles, responded to these requests with false statements. In May 2011, Charles sent letters under his name to several pool participants notifying them that Borrowing Station was no longer investing on their behalf. In these letters, Charles promised the pool participants that their funds would be returned to them within 90 days of the date of their respective letters.

42. Following the letters from Charles in May 2011, Defendants did not respond to inquiries from at least one pool participant regarding their promised repayment of funds. In or around August 2011, Charles moved from Bowie, Maryland to Raceland, Louisiana.

43. To date, Defendants have not repaid the pool participants as promised.

6. Charles Controlled Borrowing Station

44. At all material times during the relevant period, Charles was the president and chief executive officer of Borrowing Station. He had virtually complete authority over, and day-to-day control of, Borrowing Station. He did not report to anyone. Charles controlled the trading of all pool participant funds and was responsible for the handling and disposition of pool participant funds. Charles also was an authorized signatory on the Borrowing Station bank account and was the primary contact with pool participants.

7. The Nature of the Transactions

45. Neither Defendants nor the FCMs that were the counterparties to the forex transactions conducted by Defendants were United States financial institutions, registered broker dealers, insurance companies, bank holding companies, investment bank holding companies, or the APs of such entities.

46. At least some, if not all, of the pool participants were not "eligible contract participants" ("ECP") as that term is defined in Section 1a(18)(A)(xi) of the Act, 7 U.S.C. § 1a(18)(A)(xi) (Supp. V 2012). Nor were any of the pool participants ECPs as that term was defined prior to July 21, 2010. *See* 7 U.S.C. § 1a(12)(A)(xi) (Supp. III 2009). An ECP, as relevant here, is an individual who has total assets in excess of (i) \$10 million or (ii) \$5 million and who enters into the transaction in order to manage risk.

47. The forex pool operated by Defendants also was not an ECP. As of July 21, 2010, Section 1a(18)(A)(iv) of the Act, 7 U.S.C. § 1a(18)(A)(iv) (Supp. V 2012), defines ECP to include a commodity pool that "(I) has total assets exceeding \$5,000,000; and (II) is formed and operated by a person subject to regulation under [the] Act . . . provided, however, that for purposes of section 2(c)(2)(B)(iv) and section 2(c)(2)(C)(vii), the term 'eligible contract participant' shall not include a commodity pool in which any participant is not otherwise an eligible contract participant."

48. The forex transactions Defendants conducted on behalf of the pool participants or the pool were entered into on a leveraged or margined basis. Accordingly, Defendants were required to provide only a percentage of the value of the forex contracts that they purchased. The forex transactions Defendants conducted neither resulted in the delivery of actual currency within two days nor created an enforceable obligation to deliver actual currency between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex

contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an enforceable obligation to do so).

8. Borrowing Station Acted as an Unregistered CPO and Charles Acted as an Unregistered AP

49. Pursuant to Section 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), any person or entity must be registered with the Commission to operate or solicit funds, in connection with forex transactions, for any pooled investment vehicle that is not an ECP.

50. For the purposes of trading forex, a CPO is defined in Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2011), as any person or entity who operates or solicits funds, securities, or property for a pooled investment vehicle that is not an ECP, and that engages in retail forex transactions.

51. Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011), requires any person or entity engaged in retail forex transactions and acting as a CPO defined by Regulation 5.1(d)(1) to be registered as such.

52. As of October 18, 2010, Borrowing Station acted as a CPO as defined by Regulation 5.1(d)(1), relating to off-exchange foreign currency transactions, because it operated or solicited funds for a pooled investment vehicle, the pool was not an ECP as explained above, and the pool engaged in retail forex transactions.

53. As of October 18, 2010, Borrowing Station failed to register as a CPO in violation of Section 2(c)(2)(C)(iii)(I)(cc), 7 U.S.C. § 2(c)(2)(c)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

54. Regulation 5.1(d)(2), 17 C.F.R. § 5.1(d)(2) (2011), defines an AP of a CPO engaged in retail forex transactions as "any natural person associated with a commodity pool operator as defined in [Regulation 5.1(d)(1)] . . . as a[n] . . . officer, employee, . . . or agent . . . in any capacity which involves:

(i) [t]he solicitation of funds . . . for a participation in a pooled investment vehicle; or (ii) [t]he supervision of any person or persons so engaged.”

55. Together, Section 2(c)(2)(C)(iii)(I)(cc), 7 U.S.C. §2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2011), require that any person who acts as an AP of a CPO engaged in retail forex transactions to be registered with the Commission as such.

56. As of October 18, 2010, Charles acted as an AP of a CPO under Regulation 5.1(d)(2), because as president and chief executive officer of Borrowing Station, he solicited funds and/or supervised other persons who solicited funds for participation in the pooled investment vehicle that Borrowing Station operated. During the relevant period, Charles was not registered as an AP of Borrowing Station.

B. Conclusions of Law

1. Jurisdiction and Venue

57. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (Supp. V 2012), which authorizes the Commission to seek injunctive and other relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

58. The Commission has jurisdiction over the forex transactions at issue in this case pursuant to Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (Supp. III 2009), which grants the Commission jurisdiction over agreements, contracts, and transactions in forex.

59. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants were found, inhabited, resided, and/or transacted business in the

District of Maryland, and certain of the transactions, acts, practices, and courses of business alleged to have violated the Act occurred, are occurring, and/or are about to occur within this District.

2. Fraudulent Solicitation, False Statements, and Misappropriation

60. By the conduct described in Section III.A above, in or in connection with forex contracts, made, or to be made, for or on behalf of, or with, other persons, Borrowing Station through their agent Charles and others, and Charles, cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, knowingly: (i) fraudulently soliciting pool participants and prospective pool participants by making material misrepresentations and/or failing to disclose material facts to them; (ii) misappropriating pool participant funds; (iii) misrepresenting the profitability of pool trading accounts; and (iv) failing to disclose that Defendants were operating a Ponzi scheme and misappropriating pool participant funds, all in violation of Section 4b(a)(2)(A), (C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C) (Supp. III 2009), and Regulation 5.2(b)(1), (3), 17 C.F.R. § 5.2(b)(1), (3) (2011).

61. By the conduct described in Section III.A above, in or in connection with forex contracts, made, or to be made, for or on behalf of, or with, other persons, Borrowing Station through their agent Charles and others, and Charles, willfully made or caused to be made to the other persons false reports or statements by, among other things, knowingly issuing false profit checks to pool participants, in violation of Section 4b(a)(2)(B) of the Act, 7 U.S.C. § 6b(a)(2)(B) (Supp. III 2009), and Regulation 5.2(b)(2), 17 C.F.R. § 5.2(b)(2) (2011).

62. Borrowing Station through Charles and others, and Charles, engaged in the acts and practices described in Section III.A above knowingly or with reckless disregard for the truth.

63. Charles controlled Borrowing Station, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Borrowing Station's conduct constituting the violations set forth herein. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Charles is liable for Borrowing Station's violations of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (Supp. III 2009), and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2011).

64. The foregoing acts, misrepresentations, omissions, and failures of Charles and others occurred within the scope of their employment, office, or agency with Borrowing Station. Therefore, Borrowing Station is liable for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

3. Failure to Register as a CPO

65. By the conduct described in Section III.A above, as of October 18, 2010, Borrowing Station acted as a CPO under Regulation 5.1(d)(1) because it operated or solicited funds for a pooled investment vehicle, the pool was not an ECP, and the pool engaged in retail forex transactions.

66. As of October 18, 2010, Borrowing Station failed to register as a CPO in violation of Section 2(c)(2)(C)(iii)(I)(cc), 7 U.S.C. § 2(c)(2)(c)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

67. Charles controlled Borrowing Station, directly or indirectly, and did not act in good faith or knowingly induce, directly or indirectly, Borrowing Station's conduct constituting the violations set forth herein. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Charles is liable for Borrowing Station's violations of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2011).

4. Failure to Register as an AP of a CPO

68. By the conduct described in Section III.A above, as of October 18, 2010, Charles acted as an AP of Borrowing Station under Regulation 5.1(d)(2), because as president and chief executive officer of Borrowing Station, he solicited funds and/or supervised other persons who solicited funds for participation in the pooled investment vehicle that Borrowing Station operated.

69. As of October 18, 2010, Charles failed to register with the Commission as an AP of a CPO in violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) (Supp. III 2009), and Regulation § 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2011).

70. The foregoing acts, misrepresentations, omissions, and failures of Charles and others occurred within the scope of his employment, office, or agency with Borrowing Station. Therefore, Borrowing Station is liable for these acts, misrepresentations, omissions, and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

5. Need for Permanent Injunction

71. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED that:

72. Based on and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (Supp. V 2012), Defendants are permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. cheating or defrauding, or attempting to cheat or defraud, another person, or

willfully deceiving or attempting to deceive another person by any means whatsoever, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, swap, or forex transaction that is made, or to be made, for or on behalf of, or with, any other person in violation of Section 4b(a)(2)(A), (C) of the Act, 7 U.S.C. § 6b(a)(2)(A), (C) (Supp. V 2012), and Regulation 5.2(b)(1), (3), 17 C.F.R. § 5.2(b)(1), (3) (2012);

- b. willfully making or causing to be made to another person any false report or statement or willfully entering or causing to be entered for another person any false record in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, swap, or forex transaction that is made, or to be made, for or on behalf of, or with, any other person in violation of Section 4b(a)(2)(B) of the Act, 7 U.S.C. § 6b(a)(2)(B) (Supp. V 2012), and Regulation 5.2(b)(2), 17 C.F.R. § 5.2(b)(2) (2012);
- c. operating or soliciting funds, securities, or property for any pooled investment vehicle that is not an ECP and engages in forex transactions without being registered as a CPO, in violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. 2(c)(2)(C)(iii)(I)(cc) (Supp. V 2012), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2012); and
- d. soliciting funds, securities, or property for participation in any pooled investment vehicle that is not an ECP and engages in forex transactions, and/or supervising others making such solicitations without being registered as an AP of a CPO, in violation of Section 2(c)(2)(C)(iii)(I)(cc) of the Act, 7 U.S.C. 2(c)(2)(C)(iii)(I)(cc)

(Supp. V 2012), and Regulation 5.3(a)(2)(ii), 17 C.F.R. § 5.3(a)(2)(ii) (2012).

73. Defendants are also permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (Supp. V 2012));
- b. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2012)) ("commodity options"), security futures products, foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (Supp. V 2012)) ("forex contracts"), and/or swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (Supp. V 2012), and as further defined by Regulation 1.3(xxx) (2012), 17 C.F.R. § 1.3(xxx) (2012)) for his own personal account or for any account in which he has a direct or indirect interest;
- c. having any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps traded on his behalf;
- d. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps;
- e. soliciting, receiving, or accepting any funds from any person for the purpose of

- purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps;
- f. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and
- g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent, or any other officer or employee of any person (as the term "person" is defined in Section 1a of the Act, 7 U.S.C. § 1a (Supp. V 2012)) registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

V. RESTITUTION AND CIVIL MONETARY PENALTY

IT IS FURTHER ORDERED that:

A. Restitution

74. Defendants shall pay, jointly and severally, restitution in the amount of two hundred fifty four thousand two hundred and thirty six dollars (\$254,236) ("Restitution Obligation"), plus post-judgment interest. Post-judgment interest on the Restitution Obligation shall accrue beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

75. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Borrowing Station pool participants, the Court appoints the National Futures Association

("NFA") as Monitor ("Monitor"). The Monitor shall collect Restitution Obligation payments from Defendants and make distributions to Borrowing Station pool participants as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from the NFA's appointment as Monitor, other than actions involving fraud. The NFA is willing to serve as Monitor in this case.

76. Defendants shall make Restitution Obligation payments under this Consent Order to the Monitor in the name "Borrowing Station Settlement/Restitution Fund" and shall send such Restitution Obligation payments by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under a cover letter that identifies the paying Defendant, the name and docket number of this case, and the name of this Court. The paying Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

77. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Borrowing Station pool participants identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to pool participants is impractical, the Monitor may, in its discretion, treat such Restitution Obligation payments as civil monetary penalty payments, which the Monitor shall forward to the

Commission following the instructions for civil monetary penalty payments set forth in Section V.B immediately below.

78. Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Borrowing Station pool participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment firm, or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

79. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Borrowing Station pool participants during the previous year. The Monitor shall transmit this report to the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 under a cover letter that identifies the name and docket number of this case and the name of this Court.

80. The amounts payable to each Borrowing Station pool participant shall not limit the ability of any Borrowing Station pool participant from proving that a greater amount is owed from Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any pool participant that exist under state or common law.

81. Pursuant to Fed. R. Civ. P. 71, each Borrowing Station pool participant who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the Restitution Obligation that has not been paid by Defendants to ensure continued compliance with any provision of this Consent Order and to hold Defendants in contempt for any violations of any provision of this Consent Order.

82. To the extent that any funds accrue to the U.S. Treasury for satisfaction of the Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

B. Civil Monetary Penalty

83. Defendants shall pay, jointly and severally, a civil monetary penalty in the amount of three hundred and fifty thousand dollars (\$350,000) ("CMP Obligation"), plus post-judgment interest. Post-judgment interest on the CMP Obligation shall accrue beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

84. Defendants shall pay their CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the U.S. Commodity Futures Trading Commission and sent to the address below:

U.S. Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment by electronic funds transfer is chosen, the paying Defendant shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. The paying Defendant shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Defendant, the name and docket number of this case, and the name of this Court. The paying Defendant shall simultaneously transmit copies of the cover letter and the form of

payment to the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

C. Provisions Related to Monetary Sanctions

85. Partial Satisfaction: Any acceptance by the Commission or the Monitor of partial payment of Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

D. Cooperation

86. Defendants shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this case, and in any investigation, civil litigation, or administrative matter related to the subject matter of this case or any current or future Commission investigation related thereto.

VI. MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED that:

87. Notices: All notices required by any provision in this Consent Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission:

Gretchen L. Lowe
Associate Director
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Notice to Defendants:

Sidney J. Charles, Jr.
558 St. Philip Street
Raceland, LA 70394

All such notices to the Commission shall reference the name and docket number of this case.

88. Change of Address/Phone: Until such time as Defendants satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Consent Order, Defendants shall provide written notice to the Commission by certified mail of any change to their telephone number(s) and mailing address(es) within ten (10) calendar days of the change.

89. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

90. Invalidation: If any provision of this Consent Order or the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

91. Waiver: The failure of any party to this Consent Order, or any Borrowing Station pool participant, at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

92. Acknowledgements: Upon being served with copies of this Consent Order after entry by the Court, Defendants shall sign acknowledgements of such service and serve such acknowledgements on the Court and the Commission within 30 calendar days.

93. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this case to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Defendants to modify or seek relief from the terms of this Consent Order.

94. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile, or otherwise insofar as he or she is acting in active concert or participation with Defendants.

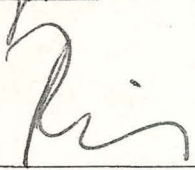
95. Authority: Charles hereby warrants that he is president of Borrowing Station, that this Consent Order has been duly authorized by Borrowing Station, and that he has been duly empowered to sign and submit this Consent Order on behalf of Borrowing Station.

96. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

97. Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

IT IS FURTHER ORDERED that, there being no just reason for delay, the Clerk of this Court is hereby directed to enter this Consent Order.

SO ORDERED, on this 22nd day of August, 2013 at Greenbelt, Maryland.



Paul W. Grimm
United States District Judge

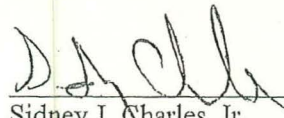
CONSENTED TO AND APPROVED BY:



The Borrowing Station, LLC
558 St. Philip Street
Raceland, LA 70394
Defendant


By: Sidney J. Charles, Jr.

Date: _____



Sidney J. Charles, Jr.
558 St. Philip Street
Raceland, LA 70394
Defendant

Date: _____



Kassra Goudarzi
DC Bar No. 490709, admitted *pro hac vice*

Michael Solinsky
DC Bar No. 433754, admitted *pro hac vice*

Attorneys for Plaintiff
U.S. Commodity Futures Trading Commission
Division of Enforcement
Three Lafayette Centre
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Washington, DC 20581
(202) 418-5384 (Solinsky)
(202) 418-5416 (Goudarzi)
(202) 418-5538 (facsimile)
msolinsky@cftc.gov
kgoudarzi@cftc.gov

Date: 8/21/13